

ORDINANCE NO. 90- 23

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE 86-8 AS AMENDED BY ORDINANCE 86-25, WHICH PROVIDES FOR LICENSURE AND REGULATION OF THE CONSTRUCTION TRADES; AMENDING, ADDING, AND DELETING PORTIONS OF SECTION 2, VIOLATIONS; AMENDING AND ADDING TO SECTION 3, DEFINITIONS; AMENDING AND ADDING TO SECTION 4, APPLICABILITY; AMENDING AND ADDING TO SECTION 5, ENFORCEMENT; AMENDING AND ADDING TO SECTION 6, EFFECT OF CITATION; PROCEDURE; AMENDING AND ADDING TO SECTION 8, LIMITATIONS ON LAW ENFORCEMENT AUTHORITY OF BOARD STAFF; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the construction industry is a matter substantially affecting the public interest; and

WHEREAS, to protect the health, safety, and general welfare of the public it is necessary to ensure that individuals engaged in the construction industry are duly qualified and that construction is done according to code; and

WHEREAS, Ordinance 86-8 as amended by Ordinance 86-25 has not ensured substantial compliance; and

WHEREAS, certain measures can be taken to streamline and expand enforcement; and

WHEREAS, the public is in need of increased protection against injury by unlicensed contractors.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, as follows:

1 PART I. AMENDMENT TO ORDINANCE 86-8 AS AMENDED BY ORDINANCE 86-25

2 Palm Beach County Ordinance 86-8 as amended by Ordinance 86-25
3 is hereby amended as follows:

4 Section 1.

5 This ordinance is intended to facilitate the uniform, orderly,
6 and comprehensive enforcement of construction trade ordinances in
7 Palm Beach County.

8 Section 2. Violations

9 It shall be a violation of this ordinance for any person,
10 individual, partnership, corporation, firm, association, or entity
11 to:

12 (a) Engage in the business of contracting in the construction
13 trades regulated pursuant to Chapter 489, Parts I and II, Florida
14 Statutes (1989); Chapter 67-1876, Laws of Florida, as amended by
15 Chapters 69-1433, 70-849, 75-476, 81-456, and 84-495; and any rules
16 and regulations promulgated under either without being in
17 compliance with all of said statutes, said Laws of florida, and any
18 rules and regulations promulgated under either;

19 (b) Intentionally furnish any materially false, misleading, or
20 misrepresentative information on an application for permit;

21 (c) Hold oneself out as being certified pursuant to said
22 Florida Statute or said Laws of Florida when not so certified;

23 (d) Hold oneself out as being licensed or registered pursuant
24 to said Statute when not so licensed or registered;

25 (e) Engage in any activity requiring a permit without having
26 obtained the appropriate permits under applicable edition of the
27 Standard Building Code, Standard Plumbing Code, Standard Mechanical
28 Code, Standard Gas Code, National Electric Code, and Standard Fire
29 Code, as such have been, or may be, amended;

30 (f) Act in the capacity of a contractor different from the
31 scope of work for which the contractor is certified to perform;

32 (g) Fail to secure required inspections;

33 (h) Willfully or deliberately disregard or violate the
34 applicable building codes or laws of any municipality, Palm Beach

1 County, or the State of Florida;

2 (i) Falsely indicate that payment has been made for all
3 subcontracted work, labor or materials which results in a financial
4 loss to the owner, purchaser or another contractor;

5 (j) Falsely indicate that workers compensation or public
6 liability insurance are provided;

7 (k) Obtain a permit for any work in which the certificate
8 holder does not actually supervise, direct and control the
9 construction or installation covered by such permit;

10 (l) Subcontract any work which encompasses services regulated
11 by said Statute, or said Laws of Florida, to any person, firm, or
12 business organization not holding a certificate of competency for
13 the type of work involved in the subcontract;

14 (fm) To advertise to the public in any publication,
15 transmission, business card, pamphlet, telephone directory, or
16 otherwise that he is a contractor, is qualified to engage in
17 business as a contractor, or that he will perform work in a trade
18 regulated by said Statute or said Laws of Florida without being
19 duly qualified to so act;

20 (gn) Submit an advertisement to any publisher for placement in
21 any publication which is primarily circulated, displayed,
22 distributed or marketed within Palm Beach County, which
23 advertisement identifies a contractor offering services regulated
24 by said statute or said Laws of Florida as they may be amended from
25 time to time, unless the advertisements include the certification
26 number issued by the State of Florida or by Palm Beach County to
27 that contractor. Nothing in this ordinance shall be construed as
28 requiring that the publisher not publish any advertisement which
29 does not include a certification number, nor determine or
30 investigate whether a certification number is required, whether the
31 license number given is accurate, nor determine or investigate
32 whether the person for whom the advertisement is published is duly
33 licensed.

1 Section 3. Definitions

2 As used in this ordinance, the following terms shall have the
3 meaning described below:

4 Advertisement - any written, oral or visual statement of
5 whatever nature or kind, appearing in any newspaper, airwave
6 transmission, telephone directory, business card, pamphlet or other
7 advertising medium, announcing, advertising or promoting services
8 regulated pursuant to said Statute or said Laws of Florida.

9 Application for permit - any permit application made under the
10 codes listed in Section 2(e) above, including all documents
11 submitted therewith.

12 Appropriate editions - the year edition of the Code listed in
13 Section 2(e) above as amended and adopted by the appropriate local
14 governmental entity.

15 Contractor - the person who is responsible for the work being
16 performed, or offered to be performed, (1) who engages in business
17 under express or implied contract in any of the trades requiring
18 certification pursuant to said Statute or said Laws of Florida; or
19 (2) who undertakes, offers, or bids to undertake, or purports to
20 have the capacity to undertake, work or perform in a trade
21 regulated pursuant to said Statute or said laws of Florida,
22 including specialty contractors and subcontractors.

23 Control - to exercise authority or dominating influence over.

24 Duly Qualified - in conformance with the requirements of said
25 Statute or said laws of Florida by being certified, licensed, or
26 registered.

27 Employee - a person who receives compensation from and is
28 under the supervision and control of an employer who regularly
29 deducts the F.I.C.A. and withholding tax and provides worker's
30 compensation, all as prescribed by law.

31 Investigator - an individual authorized by the applicable
32 local governmental entity through ordinance, resolution, policy, or
33 administrative order, to enforce the provisions of this ordinance,
34 who has the authority to issue notices to appear; including the
35 Construction Industry Licensing Board Director, Assistant Director,

1 and investigators, excluding law enforcement officers.

2 Licensed - licensed as required pursuant to said Statute.

3 Registered - registered as required pursuant to said Statute.

4 Regulated - required to be certified, licensed, and/or
5 registered pursuant to said Statute or said Laws of Florida;
6 excluding those trades or activities not subject to, or
7 specifically exempt from, said Statute or said laws of Florida.

8 Required Inspections - all inspections necessary to comply
9 with the Building, Electric, Gas, Mechanical, Plumbing Codes as
10 adopted by the Palm Beach County Board of County Commissioners as
11 outlined in the Building Codes Enforcement Administrative Code
12 Section 103.8.6 as amended from time to time or any other
13 inspections required by a Building Official. For a new building,
14 required inspections include all inspections required prior to
15 issuance of a certificate of occupancy.

16 Said Laws of Florida - Chapter 67-1986, Laws of Florida, as
17 amended by Chapters 69-1433, 75-476, 81-456, and 84-495, as such
18 may be amended, and any rules or regulations adopted thereunder.

19 Said Statute - Chapter 489, Florida Statutes, Parts I and II
20 (1989) as such may be amended, and any rules or regulations adopted
21 thereunder.

22 Supervision - familiarity with building plans and sites,
23 periodic inspection of the site and review of the job for
24 compliance with building plans and applicable codes, and ultimate
25 responsibility for the work performed.

26 Section 4. Applicability.

27 The provisions of this ordinance shall apply to both the
28 incorporated and unincorporated ares of palm Beach County pursuant
29 to Article VIII, Section 1(g), Florida Constitution, and Article 1,
30 Section 1.3, Palm Beach County Charter.

31 Section 5. Enforcement

32 (a) The Director, Assistant Director, and investigators of
33 the Palm Beach County Construction Industry Licensing Board are
34 hereby charged with the enforcement responsibilities of this
35 ordinance. Said investigators shall become specially deputized by

1 the Palm Beach County Sheriff.

2 (b) The Construction Industry Licensing Board Director,
3 Assistant Director, and investigators who are specially deputized
4 are hereby authorized to issue citations or notices to appear for
5 the violation of this ordinance when, based upon personal
6 investigation, the investigator has reasonable probable grounds to
7 believe that a violation of this ordinance has occurred.

8 (c) investigators shall not have the power of physical
9 arrest.

10 (d) Law enforcement officers are authorized to enforce the
11 provisions of this ordinance.

12 (e) Municipalities within which this ordinance is effective
13 may, by ordinance, resolution, policy, or administrative order,
14 authorize individuals to enforce the provisions of this ordinance.

15 (f) The Director, Assistant Director, and investigators of
16 the Construction Industry Licensing Board are hereby authorized to
17 inspect and audit the records of construction firms to determine
18 compliance with this ordinance, said Statute or said Laws of
19 Florida or Chapter 440, Florida Statutes, when based upon
20 reasonable suspicion that a violation of any law or ordinance
21 referenced in this subsection has occurred.

22 (g) The Director or Assistant Director of the Construction
23 Industry Licensing Board shall have the power to subpoena records,
24 surveys, drawings, contracts or other documentary materials
25 regarding activities regulated by this ordinance, said Statute,
26 said Laws of Florida, or Chapter 440, Florida Statutes, when based
27 upon reasonable suspicion that a violation of any law or ordinance
28 referenced in this subsection has occurred.

29 (h) The Director and Assistant Director of the Construction
30 Industry Licensing Board shall have the power to subpoena telephone
31 company records regarding telephone numbers used in advertisements
32 or listings regarding regulated activity pursuant to this
33 ordinance, said Statute, or said Laws of Florida, where address of
34 the telephone number and/or name and address of the subscriber is
35 unavailable to the investigator of the Construction Industry

1 Licensing Board. The information obtained via subpoena shall be
2 limited to the name of the person or entity who has obtained phone
3 service, the mailing address of the person or entity who has
4 obtained phone service, and the address where the phone line in
5 question is located.

6 Section 6. Effect of Citation; Procedure

7 (a) Any person cited for violation of this ordinance shall be
8 cited to appear in County Court.

9 (b) Any person cited for an infraction under this section
10 shall sign and accept a citation indicating a promise to appear.

11 (c) Any person who willfully refuses to accept and sign the
12 citation shall be in violation of this ordinance and shall be
13 punished in accordance with Section 125.69, Florida Statutes.

14 (d) Any person cited with a violation of this ordinance may
15 pay the penalty in accordance with the schedule set forth in
16 Section 7 within ten (10) days of the date of receiving the
17 citation with the exception of citations where it is alleged that
18 customers have suffered a monetary loss or where a person is
19 charged with a fourth violation during a twelve month period.

20 (e) If the person cited follows the above procedure, he shall
21 be deemed to have admitted the violation and to have waived his
22 right to a hearing on the issue of the commission of the
23 infraction.

24 (f) Any person electing to appear or who is required to so
25 appear shall be deemed to have waived his right to the civil
26 penalty.

27 (g) Any person cited for a fourth violation in any twelve
28 month period and/or any person charged with a violation where there
29 is an alleged financial loss to a customer shall have a mandatory
30 court appearance.

31 Section 7. Penalties

32 (a) The penalty required for the disposition of an infraction
33 of this ordinance shall be as follows:

<u>Number of Violations</u> <u>Within Any 12 Month Period</u>	<u>Amount of Fine</u>
(1) First Violation	\$125.00
(2) Second Violation	250.00
(3) Third Violation	400.00

(b) For each successive violation thereafter, the penalty shall be as set forth in Florida Statutes, Section 125.69 (\$500.00 and/or sixty days imprisonment), but in no event shall the fine be less than Four Hundred Dollars (\$400.00) for the fourth and each violation thereafter, or less than the fine set forth in Section 7(a) for the respective violation.

(c) Each day of a continuing violation, each advertisement, each permit, each contract, and each separate activity requiring a permit shall constitute a separate violation under Section 2.

Section 8. Limitations on Law Enforcement Authority of Board Staff

Nothing herein contained shall be construed to authorize or permit said investigators or the Construction Industry Licensing Board Director or Assistant Director to perform any function or duty of a law enforcement officer other than as specified herein.

PART 2. SEVERABILITY

If any section, paragraph, sentence, clause, phrase, or word of this ordinance is for any reason held by the Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this ordinance.

PART 3. INCLUSION IN THE CODE OF LAWS AND ORDINANCES

The provisions of this ordinance shall become and be made a part of the code of laws and ordinances of Palm Beach County, Florida. The Sections of the ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

PART 4. EFFECTIVE DATE

The provisions of this ordinance shall become effective upon receipt of acknowledgement by the Secretary of State.

1 APPROVED AND ADOPTED by the Board of County Commissioners of
2 Palm Beach County, Florida, on the 24th day of July, 1990.

3 PALM BEACH COUNTY, FLORIDA, BY ITS
4 BOARD OF COUNTY COMMISSIONERS

5 By [Signature]
6 Chairman

7 APPROVED AS TO FORM AND
8 LEGAL SUFFICIENCY

9
10 [Signature]
County Attorney

JOHN B. DUNKLE, CLERK
Board of County Commissioners

DEPUTY CLERK

11 Acknowledgement by the Department of State of the State of
12 Florida, on this, the 6th day of August, 1990.

13 EFFECTIVE DATE: Acknowledgement from the Department of State
14 received on the 10th day of August, 1990, at 8:09^{a.}.m., and
15 filed in the Office of the Clerk of the Board of County
16 Commissioners of Palm Beach County, Florida.

17 (orpb1)

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, ex-officio Clerk of the
Board of County Commissioners certify this to
be a true and correct copy of the original filed in
my office on 7/24/90
DATED at West Palm Beach, FL on 7/24/90
JOHN B. DUNKLE, Clerk
By: [Signature] D.C.